

DISTRICT COURT OF GUAM  
TERRITORY OF GUAM

CHROME HEARTS, LLC,  
Plaintiff,

vs.

ALMA SHOP; JUNG WOO NAM; HAPPY  
HAPPY GIFT SHOP; BONG SUN AHN;  
GUAM PALM CORPORATION doing business  
as HAWAIIAN SILVER; YOUNG SAN  
NICOLAS; 925 MINE; HUNG BUM CHOI;  
ASHINN SHIATSU MASSAGE; GARDEN  
JEWELRY; FEN SHAN PIAO; A+ ACCESSORY  
PLUS dba KYODIA; and KAWAII GIFT SHOP;

Defendants.

Civil Case No. 08-00009

**ORDER RE: MOTION TO DISMISS**

This case is before the court on the Defendants' Robert H. Choi dba 925 Mine ("Mr. Choi") and Tommy Lee ("Mr. Lee") dba Kyodia – A+ Accessory Plus (collectively "moving Defendants") Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6). *See* Docket No. 20. Defendant 925 Mine joins in the motion. *See* Docket No. 25. Pursuant to Local Civil Rule 7.1(e)(3), this matter is appropriate for decision without the need for oral argument.<sup>1</sup> After reviewing the parties' submissions, as well as relevant caselaw and

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<sup>1</sup> Local Civ.R. 7.1(e)(3) states "[i]n cases where the parties have requested oral argument, such oral argument may be taken off calendar by Order of the Court, in the discretion of the Court, and a

1 authority, the court hereby denies the motion and issues the following decision.

## 2 I. BACKGROUND

3 This action was filed by Chrome Hearts LLC (“Chrome Hearts”) on July 24, 2008.  
4 Plaintiff’s complaint alleges copyright and trademark infringements against the Defendants and  
5 others. The Plaintiff identified five causes of action against the Defendants: 1) copyright  
6 infringement (17 U.S.C. § 101 *et seq.*); 2) trademark infringement (15 U.S.C. § 1114); 3) unfair  
7 competition (Lanham Act § 43(a)); 4) trademark dilution (15 U.S.C. § 1125(c)); and 5) common  
8 law unfair competition and trademark infringement. *See* Docket No. 1, Complaint. Since early  
9 1989, Chrome Hearts has been designing, manufacturing, and selling leather goods, apparel,  
10 jewelry and accessories. *Id.* at ¶ 13. All products produced or packaged by Chrome Hearts bear  
11 the trademark CHROME HEARTS. *Id.* at ¶ 14. Chrome Hearts is the owner of numerous  
12 trademarks and copyrights, which have been registered with the U.S. Patent and Trademark Office  
13 and is entitled to the exclusive use and benefits of such registrations. *Id.* at ¶¶ 22-25.

## 14 II. ANALYSIS

### 15 A. Legal Standard

16 The moving Defendants move to dismiss the plaintiff’s complaint pursuant to Fed.R.Civ.P.  
17 12(b)(6). Federal Rule of Civil Procedure 12(b)(6) provides for dismissal when a complaint fails  
18 to state a claim upon which relief can be granted. *See* Fed.R.Civ.P. 12(b)(6). In ruling on a motion  
19 to dismiss, the court accepts the veracity of all well-pleaded facts in the plaintiffs’ complaint and  
20 views both the facts and all reasonable inferences in the light most favorable to the plaintiffs.  
21 *Zinerman v. Burch*, 494 U.S. 113, 118 (1990). A motion to dismiss for failure to state a claim is  
22 viewed with disfavor and is rarely granted. *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9<sup>th</sup>  
23 Cir. 1997) (citing *Hall v. City of Santa Barbara*, 833 F.2d 1270, 1274) (9<sup>th</sup> Cir. 1986), *cert. denied*,  
24 485 U.S. 940 (1988)(overruled on other grounds)). In addition, the issue before the court is not  
25 whether the plaintiff’s claim will ultimately prevail, but whether the plaintiff is entitled to offer  
26 evidence in support of the claims. *Villager Pond, Inc. v. Town of Darien*, 56 F.3d 375, 378 (2d

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28 decision rendered on the basis of the written materials on file.”

1 Cir.1995). When considering a motion to dismiss under Rule 12(b)(6) for failure to state a claim,  
2 a court must decide whether the facts alleged in the complaint, if true, would entitle Plaintiffs to  
3 some form of legal remedy. Unless the answer is unequivocally “no,” the motion must be denied.  
4 *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

5 Under Federal Rule of Civil Procedure 8, a pleading shall contain “a short and plain  
6 statement of the claim showing that the plaintiff is entitled to relief.” Moreover, “[t]he pleadings  
7 need not identify any particular legal theory under which recovery is sought.” *Crull v. GEM Ins.*  
8 *Co.*, 58 F.3d 1386, 1391 (9th Cir.1995). It is enough that the complaint gives the defendant fair  
9 notice of what the plaintiff's claim is and the grounds upon which it rests so that the defendant can  
10 frame a responsive pleading. *Conley*, 355 U.S. at 47. Rule 8(a)(2) requires only “a short and plain  
11 statement of the claim showing that the pleader is entitled to relief.” *Id.* The court stated that the  
12 complaint need only place the defendant on fair notice of the claim and the grounds upon which  
13 it rests. . . . specific facts are not necessary. *Erickson v. Pardus*, 127 S.Ct. 2197, 2200 (2007).

#### 14 **B. Applying the Standard**

15 The moving Defendants challenge the Plaintiff’s complaint as containing only conclusory  
16 elements of claims without any specific facts in support of the allegations. In support, the moving  
17 Defendants assert that the Plaintiff neglected to undertake the “most basic investigation” as to the  
18 parties involved in the matter. By way of example, the moving Defendants point to the fact that  
19 the Plaintiff failed to determine the character of the Defendants (e.g. whether the Defendants  
20 legally exist as corporations, LLCs, sole proprietorships, or as some other form of legal entity).  
21 See Docket No. 20, Motion at p. 6. In addition, the moving Defendants argue the complaint fails  
22 to indicate the places and time frames during which the alleged infringing activity occurred. The  
23 court finds the Defendants arguments unpersuasive.

24 To properly state a claim of copyright infringement, a plaintiff need only show (1)  
25 ownership of a valid copyright and (2) allege copying of original work. *Funky Films, Inc. v. Time*  
26 *Warner Entm't Com.*, 462 F.3d 1072, 1076 (9th Cir.2006). Upon review of the complaint, the court  
27 finds that the facts set forth offer a clear description of the defendants’ infringing acts. It alleges  
28 that the “Defendants have knowingly infringed upon Chrome Hearts’ respective copyrights in its

1 designs by *manufacturing, distributing and selling substantially similar copies* of the Chrome  
2 Hearts' designs." Docket No. 1, Complaint, ¶ 27. The Plaintiff further alleges that the Defendants  
3 employed molds to create identical products and engaged in selling those counterfeit products on  
4 Guam and throughout the United States, without the permission or authorization of the Plaintiff.  
5 *Id.* at ¶¶ 28, 30.

6 In order to make out a claim for trademark infringement, "a plaintiff must plead 1) that the  
7 plaintiff owns valid registrations of the trademark ; 2) defendant's mark is a counterfeit, imitation,  
8 or reproduction; 3) defendant's goods have been used in commerce; 4) such use was without  
9 plaintiff's consent; and 5) such use is likely to cause confusion or deceive." *Sebastian Int'l, Inc.*  
10 *v. Russolillo*, 186 F.Supp.2d 1055, 1063 (C.D. Cal. 2000). The Plaintiff has alleged it owns  
11 registered trademarks (*see* Complaint, exhibits attached thereto); the Defendants' products bore  
12 counterfeits of the mark or a mark confusingly similar to that of the Plaintiff's and were designed  
13 to deceive consumers (*see* Complaint, ¶ 35); counterfeit goods were used in commerce without  
14 the consent or permission of the Plaintiff (*see* Complaint, ¶¶ 35-39); and such use is likely to cause  
15 confusion (*see* Complaint, ¶ 36). The Plaintiff has, therefore, successfully pled the necessary  
16 elements of trademark infringement claim against all Defendants.

17 The requirements of a claim for unfair competition are similar to those of trademark  
18 infringement. Section 43(a)(1), the pertinent section for Unfair Competition Claims (Count III),  
19 states that:

20 Any person who, on or in connection with any goods or services, ... ***uses in***  
21 ***commerce*** any word, term, name, symbol, or device, or any combination thereof,  
22 or any false designation of origin, false or misleading description of fact, or false  
or misleading representation of fact, which-

23 (A) is ***likely to cause confusion***, or to cause mistake, or to deceive ... as to the  
24 origin, sponsorship, or approval of his or her goods, services, or  
***commercial activities by another person***, or

25 (B) in commercial advertising or promotion, misrepresents the nature,  
26 characteristics, qualities, or geographic origin of his or her or another  
person's goods, services, or commercial activities,

27 shall be liable in a civil action by any person who believes that he or she is or is  
28 likely to be damaged by such act.

1 Lanham Act § 43(a)(1), 15 U.S.C. § 1125(a)(1) (emphasis added).

2 Plaintiff alleges that “Defendants, with knowledge of the widespread recognition of  
3 Chrome Hearts’ products among the relevant segment of the market and with the specific intent  
4 to exploit that recognition, have undertaken to *make and sell jewelry and accessories* bearing  
5 counterfeits of the Chrome Hearts Mark.” Docket No. 1, Complaint, ¶ 47. Incorporating the  
6 allegations from its trademark claim, the Plaintiff contends that the Defendants’ use of the marks  
7 in commerce have caused confusion within its market. *Id.* at ¶ 36. Similarly, the complaint is  
8 sufficient in alleging unfair competition under the Lanham Act.

9 To prove a violation of the Federal Trademark Dilution Act, “a plaintiff must show that  
10 1) the mark is famous; 2) the defendant is making a commercial use of the mark in commerce; 3)  
11 the defendant's use began after the mark became famous; and 4) the defendant's use of the mark  
12 dilutes the quality of the mark by diminishing the capacity of the mark to identify and distinguish  
13 goods and services.” *Panavision v. Toeppen*, 141 F.3d 1316, 1324 (9th Cir.1998).

14 The Plaintiff has alleged that the Defendants were involved in the marketing, advertising  
15 and selling of inferior counterfeit Chrome Heart products after Chrome Heart products were  
16 already famous. *See* Complaint, ¶¶ 43-50, 52. The court therefore finds the Plaintiff has  
17 adequately pled a claim for trademark dilution.

18 The court finds that the vagueness argument fails; there is enough information provided  
19 in the Complaint to guide the moving Defendants in their responsive pleadings. While the moving  
20 Defendants claim there is no specificity as the time and place of the infringing conduct, the  
21 Complaint suggests otherwise. The complaint is specific as to each Defendant. It individually  
22 alleges that each “committed the acts complained of herein within Guam.” Docket No. 1,  
23 Complaint, ¶¶ 3a, 4a, 5a, 6, 7a, 8, 9a.<sup>2</sup>

24 In addressing defendants’ concern for lack of temporal facts, the court in *Proline Concrete*  
25 *Tools, Inc. v. Dennis*, 2008 WL 927883 (S.D.Cal.), found a complaint’s allegation sufficient in that

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27 <sup>2</sup> As to defendant Alma Shop, the complaint states that this defendant “committed the  
28 acts complained of herein within this Judicial District.” Docket No. 1, Complaint, ¶ 2(a).

1 the infringement “began sometime after Proline began creating” its product in 1991 and  
2 “continued through the time Proline filed the complaint.” *Proline*, 2008 WL 927883, \*3. The  
3 Plaintiff here has similarly pled ongoing infringement and harm. Their exhibits point to the date  
4 the copyrights and trademarks were registered. Docket No. 1, Complaint, ¶¶ 22-24, Exhibits 1-2.  
5 The plaintiff has alleged that infringement occurred at least up until the complaint was filed. *Id.*,  
6 ¶ 35; Docket No. 26, Opposition, pp. 3,6. Throughout the complaint, Guam is mentioned as the  
7 place where the infringing acts took place. In claiming ongoing infringement, the plaintiff has  
8 offered a sufficient time frame. Thus, plaintiff’s complaint offers enough detail as to time and  
9 place thereby meeting the notice pleading standard.

### 10 III. CONCLUSION

11 Based upon the foregoing reasons, it is not clear to this court that no relief could be granted  
12 under any set of facts that could be proved consistent with the allegations. Accordingly, the  
13 Defendants’ Motion to Dismiss is **DENIED**.

14 Moving Defendants shall have until April 3, 2009 within which to file their Answer.

15 SO ORDERED.



/s/ Frances M. Tydingco-Gatewood  
Chief Judge  
Dated: Mar 23, 2009